Legislative Analysis

AMEND PUBLIC ACT 51 of 1951 TO CREATE TWO NEW FUNDS: MOVABLE BRIDGE FUND & LOCAL AGENCY WETLAND MITIGATION BANK FUND

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Senate Bill 105 (as passed by the Senate)
Sponsor: Sen. Mike Green
Senate Committee: Transportation
House Committee: Appropriations
Complete to 3-15-16

SUMMARY:

Senate Bill 105 (S-3) would amend Section 10 of 1951 PA 51 ("Act 51"), the section that governs the distribution of Michigan Transportation Fund (MTF) revenue. Section 10 of Act 51 currently directs MTF revenue to the State Trunkline Fund (STF), to other state transportation funds and programs, and to local road agencies (county road commissions, cities and villages).

The bill would earmark $5.0 million in MTF revenue to a new *Local Agency Wetland Mitigation Bank Fund* established by the bill in a new section, Section 11h. The bill would also earmark $5.0 million in MTF revenue to a new *Movable Bridge Fund* established by the bill in new Section 11g.

Both of these earmarks would come "off the top" of the current MTF distribution; in other words, the earmarks would be among the statutory earmarks of MTF revenue that, in the order of Section 10, come prior to the final distribution of MTF revenue to the STF, to county road commissions, and to cities and villages. With respect to the $5.0 million earmark for the Movable Bridge Fund, the bill makes this earmark from a current earmark of 3 cents of the gasoline motor fuel tax to the STF, to county road commissions, and to cities and villages.

The bill directs the Michigan Department of Transportation to annually adjust the amount allocated to the Movable Bridge Fund by "an amount equal to the annual increase in the Detroit consumer price index for the preceding year."

DETAILED ANALYSIS:

Movable Bridge Fund – Sections 10 and 11g

Section 10 of Act 51 governs the distribution of MTF revenue to the STF, to other state transportation funds and programs, and to county road commissions, cities and villages. Senate Bill 105 (S-3) would amend Section 10 to establish a new annual earmark of $5.0 million from the MTF for credit to a new *Movable Bridge Fund* established in new Section 11g. The new $5.0 million earmark would come out of an existing earmark in Section 10, an earmark of 3 cents of the motor fuel tax on gasoline. This existing earmark, equal to approximately $130.0 million, is currently distributed to the STF, to county road commissions, and to cities and villages.

The bill would require the Michigan Department of Transportation to "*annually adjust the amount allocated under this subdivision by an amount equal to the annual increase in the Detroit Consumer Price Index for the preceding year*." Although we assume this provision is intended to apply to the $5.0 million Movable Bridge Fund earmark only, we believe that this provision could apply to the entire 3-cent gas tax earmark as well.

New Section 11g would establish the *Movable Bridge Fund* within the state Treasury. The fund would be a restricted fund; fund revenue would not lapse to the state General Fund. The Michigan Department of Transportation would be the fund administrator for auditing purposes.

The bill would authorize the Michigan Department of Transportation to enter into a contract with a person or agency that had jurisdiction over a publicly owned movable bridge for the operation of that bridge. Under provisions of the bill, contracts would have to require that contractors hired by the department to operate a movable bridge maintain insurance in an amount specified by the department. The bill would not require the department to assume ownership a publicly owned movable bridge as part of any contract.

Using a process described in the bill, the bill directs the department to develop procedures to govern the operation of publicly owned movable bridges, and cost estimates for operating publicly owned movable bridges on an annual basis. The bill directs the department to annually distribute money from the Movable Bridge Fund to each person or agency responsible for operation of a publicly owned movable bridge. The department would be eligible for a distribution from the Movable Bridge Fund for movable bridges under its jurisdiction.

The Michigan Department of Transportation indicates that there are 12 movable bridges on the state trunkline system, and 12 movable bridges under the jurisdiction of 8 separate local road agencies (county road commissions or cities).

There is currently no specific earmark for movable bridges in Act 51; the department pays for the costs of operating movable bridges on the state trunkline system from its STF funding; local road agencies with movable bridges pay for bridge operating costs from their Act 51 distribution of MTF funds.

Local Agency Wetland Mitigation Bank Fund – Sections 10 and 11h

As noted above, Section 10 of Act 51 governs the distribution of MTF revenue. Senate Bill 105 (S-3) would amend Section 10 to establish a new annual earmark of $5.0 million from the MTF for credit to a new *Local Agency Wetland Mitigation Bank Fund* established in new Section 11h. This new earmark would come "off the top" of the current MTF distribution; in other words, the earmark would become one of the statutory earmarks of MTF revenue that, in the order of Section 10, come prior to distribution to the Comprehensive Transportation Fund (CTF) and prior the final distribution of MTF revenue to the STF, to county road commissions, and to cities and villages.

New Section 11h would establish the *Local Agency Wetland Mitigation Bank Fund* within the state Treasury. The fund would be a restricted fund; fund revenue would not lapse to the state General Fund.

The bill directs that money appropriated to the Local Agency Wetland Mitigation Bank Fund, and interest accruing to the fund, be expended for the Local Agency Wetland Mitigation Bank Program. The bill would limit the unobligated fund balance to $10.0 million.

The bill would create a nine-member Local Agency Wetland Mitigation Bank Advisory Board composed of:

- Three voting members from the County Road Association of Michigan (CRAM) – one from a county with a population greater than 400,000; one from a county with a population greater than 65,000 but less than 400,000; and one from a county with a population less than 65,000.
- Three voting members from the Michigan Municipal League (MML) – one from a city with a population of 70,000 or less; one from a village.
- One voting member/engineer appointed jointly by CRAM and MML.
- Two non-voting members appointed by the MDOT and the Department of Environmental Quality (DEQ).

The bill includes other provisions governing the qualifications of board members and the conduct of board meetings.

The bill directs that the two non-voting members of the board appointed by the department and the DEQ provide qualified administrative staff and qualified technical assistance to the board as necessary.

The bill directs the Local Agency Wetland Mitigation Bank Program to provide grants to local road agencies for one or more of the following:

- Complete engineering and design for a wetland mitigation bank.
- Purchase of land for a wetland mitigation bank
- Construction of a wetland mitigation bank
- Monitoring and maintenance necessary to ensure that the performance standards are or will be met
- Funding for a previously established wetland mitigation bank

The bill provides that not more than 20% of a wetland mitigation bank may be sold to the private sector. The bill directs that any revenues generated from such a sale be deposited to the Local Agency Wetland Mitigation Bank Fund.

The bill also authorizes the Advisory Board to approve the use of grant funds for other activities needed to establish a wetland mitigation bank upon demonstrated need by a local road agency.

FISCAL IMPACT:

MTF revenue is generated from motor fuel taxes and vehicle registration taxes. The estimated MTF distribution to the state (i.e. the STF) and local road agencies would total $1.7 billion in FY 2015-16. Because of increases in estimated baseline MTF revenue, and because of additional revenue provided through the Road Funding Plan passed November 2015 and effective January 2017, the estimated FY 2016-17 MTF distribution to the state and local road agencies would total $2.2 billion.

Senate Bill 105 (S-3) would not increase MTF revenue. It would change the distribution of MTF revenue by establishing two new earmarks in Section 10 of Act 51. The earmark of $5.0 million for the new Movable Bridge Fund would come out of an existing distribution to the state and local road agencies. It would effectively provide additional funding for those agencies that own and operate movable pubic bridges. How the $5.0 million earmark would be distributed between state and the particular local road agencies that own movable bridges cannot be determined at this time.

The new $5.0 million earmark of MTF for credit to a new Local Agency Wetland Mitigation Bank Fund would come "off the top" of the current MTF distribution; in other words, it would come prior to the Section 10 distribution of MTF revenue to the CTF, the STF, to county road commissions, and to cities and villages. As a result, this earmark would increase revenue for a new dedicated/targeted local road program, but would reduce the MTF distribution to the CTF by $500,000, and the MTF distribution to the STF by $1.8 million.

Fiscal Analyst: William E. Hamilton

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